

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

IN THE MATTER OF:

Docket No. PWS-AO-2019-6004

Grindstone Indian Rancheria,
Public Water System, PWS ID. No. 090605004

Respondent.

EMERGENCY ADMINISTRATIVE ORDER

Proceedings pursuant to Section 1431(a) of the
Safe Drinking Water Act, 42 U.S.C. § 300i(a).

AUTHORITY

1. The Enforcement and Compliance Assurance Division for Region 9 of the U.S. Environmental Protection Agency ("EPA") issues this Emergency Administrative Order ("Order") to the Grindstone Indian Rancheria ("Respondent") pursuant to the EPA's authority under Section 1431(a) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300i(a). The undersigned officials have been properly delegated this authority.
2. The EPA has primary enforcement responsibility for the SDWA public water system supervision program on the Grindstone Indian Rancheria ("Rancheria"). No other governmental authority has applied for and been approved to administer the program on the Rancheria.
3. The EPA may issue an Order pursuant to Section 1431(a) of the SDWA, 42 U.S.C. § 300i(a), when a contaminant is present or is likely to enter a public water system, which may present an imminent and substantial endangerment to the health of persons, and appropriate state and local authorities have not acted to protect the health of such persons.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. Respondent is a federally recognized tribe and therefore is a "person" as that term is defined in the Act. 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2, for purposes of federal enforcement under the SDWA.
5. Respondent owns and operates a "public water system" within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2, known as the Grindstone Rancheria Public Water System ("System"), which serves water for human consumption

through approximately 56 service connections to approximately 150 persons located on the Rancheria, in Elk Creek, California.

6. Respondent's ownership and operation of a public water system makes it a "supplier of water" within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2, and subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations at 40 C.F.R. Part 141.
7. The System regularly serves at least 25 year-round residents and is therefore a "community water system" ("CWS") within the meaning of Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.
8. The System is solely supplied by surface water from Stony Creek, which draws from a watershed with numerous potential agricultural, municipal, and industrial contaminant sources.
9. The SDWA's Surface Water Treatment Rule ("SWTR") requires, among other things, that public water systems served by surface water:
 - a. Provide at least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts and at least 99.99 percent (4-log) removal and/or inactivation of viruses. 40 C.F.R. § 141.70(a).
 - b. Public water systems served by surface water that provide water to a population equal to or fewer than 500 persons must take daily grab samples at the entry point to monitor for residual disinfectant (here, "residual chlorine"). 40 C.F.R. § 141.74(c)(2).
10. The System uses a chemical disinfectant (chlorine) and membrane filtration to treat raw water from Stony Creek.
11. The SDWA's SWTR requires, among other things, that public water systems served by surface water that use filtration must:
 - a. Ensure that the residual disinfectant concentration (here, "residual chlorine") at the public water system's entry point is no less than 0.2 mg/L for more than 4 hours. 40 C.F.R. § 141.72(b).
 - b. Report minimum chlorine residual and storage tank levels on a daily basis to meet the inactivation requirement.
 - c. Perform continuous monitoring for turbidity. 40 C.F.R. § 141.74(c)(1).
12. The SDWA's Stage 1 Disinfection Byproducts Rule ("DBPR") at 40 C.F.R. § 141.130(c) requires, among other things, that any CWS that adds a chemical disinfectant (e.g., chlorine) to the water in any part of the drinking water treatment process must be operated by "qualified" personnel who meet the requirements specified by the State (or the EPA where it

is the primacy agency). Similarly, the SWTR at 40 C.F.R. § 141.70(c) requires that any CWS supplied by a surface water source be operated by qualified personnel.

13. On December 15, 2017, EPA Region 9 entered into an Administrative Order on Consent (“AOC”) with Respondent, under which Respondent agreed to bring its System into compliance with several requirements of the SDWA and its national primary drinking water regulations, including:
 - a. Compliance with the SWTR treatment and monitoring requirements by September 30, 2018.
 - b. Submission of monthly operating reports (“MORs”) to EPA containing monitoring results for residual chlorine, tank levels, and turbidity in the System’s distribution system.
 - c. Compliance with the “qualified” operator requirements of the DBPR and SWTR by March 31, 2019.
14. Prior to issuing this Order, the EPA confirmed tribal and local authorities have not acted to protect the health of persons in this instance.
15. The EPA has determined that the following conditions at the System may present an imminent and substantial endangerment to the health of persons:

Failure to adequately disinfect surface water supplies

16. Respondent’s residual chlorine monitoring of its distribution system under the SWTR showed non-detectable levels of residual chlorine in February and May 2019 (and Respondent’s March MOR showed a non-detectable level of residual chlorine at the System’s entry point), and the EPA understands that Respondent has recently exhausted its supply of approved chlorine and may currently be using non-approved chlorine (*i.e.*, household bleach) to disinfect its drinking water and/or is not disinfecting the water at all. Consequently, there can be no assurance that the water has been adequately treated to meet SDWA standards and therefore, the consumers of the water have the potential to be exposed to pathogens (*e.g.*, *E. coli*). Moreover, prior MORs received from Respondent show a failure to monitor for turbidity and residual chlorine levels at the System’s entry point from March 1 through March 14, 2019; and a failure to conduct any monitoring for residual chlorine levels from April 12 through April 30, 2019. This means the surface water coming into the System’s treatment system may not have been adequately chlorinated for an unknown period of time.

Failure to adequately fund System operations

17. EPA understands Respondent has failed to approve the necessary funding to properly operate the System. Failure to adequately fund public water system operations (*e.g.*, where they prevent the retention of qualified personnel to operate and maintain the system) creates

conditions that may pose an imminent and substantial endangerment to the health of persons that are served by the system.

Use of unqualified personnel to operate the System

18. Since at least 2012, Respondent has failed to retain “qualified personnel” (*e.g.*, an operator with at least Treatment Level 1/Distribution Level 1 (“T1/D1”) certification) to operate the System as required by the DBPR at 40 C.F.R. § 141.130(c) and the SWTR at 40 C.F.R. § 141.70(c). Failure to use a “qualified” operator creates conditions that may pose an imminent and substantial endangerment to the health of persons. The EPA has found that unqualified and inadequately trained and certified operators, particularly at small systems, may lack adequate knowledge of operations and maintenance of drinking water treatment systems, and may not be aware of the latest drinking water requirements. *See generally* U.S. EPA, *Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems*, 64 Fed. Reg 5916, 5918 (Feb. 5, 1999).

EMERGENCY ORDER

Intent to Comply

19. Within 24 hours of receipt of this Order, Respondent must notify the EPA in writing of its intent to comply with the terms of this Order. Email to the EPA point of contact identified below in paragraph 39 is acceptable.

Boil Water and Public Notice

20. Within 24 hours of receipt of this Order, Respondent shall re-distribute the Boil Water Notice (“BWN”) previously provided on April 12, 2019 to all customer homes and post it in conspicuous locations. Respondent must submit a copy of the BWN and a certification of distribution to the EPA within 24 hours of its distribution. Respondent shall provide the BWN on a monthly basis until the EPA provides written notification to discontinue.

Immediate use of chlorine disinfectant

21. Respondent shall immediately procure and continuously use National Sanitation Foundation (“NSF”)-approved chlorine disinfectant.
22. Within five days of receipt of this Order, Respondent shall submit documentation (*e.g.*, receipts, product sheet, photos) of the purchase and/or use of NSF-approved chlorine.

System Disinfection and Monitoring Requirements

23. Respondent shall collect consecutive weekly (one sampling event per week) special purpose bacteriological samples (defined in 40 C.F.R. § 141.21(a)(6)) and residual chlorine samples

from the System's distribution system at the following sampling locations:

- a. Sampling locations Lot 2 and Lot 14 for residual chlorine sampling.
 - b. Sampling location Lot 14 for bacteriological sampling.
24. Respondent shall take follow-up coliform samples within 24 hours of being notified of a total coliform or *E. coli* positive. Follow-up samples shall be taken at lot 14 and within 5 service connections upstream and downstream of lot 14
25. Respondent shall increase monitoring of tank level and residual chlorine levels (at the System's entry point) from once per day to four times per day, roughly four hours apart, seven days per week.
26. Respondent must ensure that the residual disinfectant concentration in the water entering the System's distribution system be at least 0.2 mg/l for every 4-hour period. If at any time it is less than 0.2 mg/L, Respondent shall stop operating the water treatment system and notify the EPA of this situation within 24 hours.
27. After Respondent receives written notification from the EPA that it may discontinue increased frequencies of bacteriological and residual chlorine sampling pursuant to paragraphs 25 and 26, Respondent shall thereafter resume monthly bacteriological and residual chlorine sampling as required by 40 C.F.R. §§ 141.853-857.

Increased operating report submission frequency

28. Respondent shall submit operating reports and monitoring data to EPA electronically (e.g., by email) every Monday that provides weekly monitoring data generated during the prior seven days.
29. Respondent shall include in the weekly monitoring reports a log of dates/times of membrane filter operation and maintenance, *i.e.*, backwash and clean-in-place.

Alternative Water

30. Respondent shall recommence providing alternative water in accordance with the 2017 AOC that meets all applicable SDWA requirements at 40 C.F.R. Part 141.
31. Prior to providing alternative water Respondent shall first develop an Alternative Water Supply Plan ("AWSP") wherein Respondent details how and where it will provide at least one gallon of potable water per day, per person. This per person daily allotment of alternative water must be made accessible to all persons served by the System. Additionally, the AWSP will outline how it plans to inform every person served by the System when an alternative water supply is made available.

32. Within seven calendar days of the Effective date of this Order, Respondent shall submit the AWSP to the EPA, for review and approval. The EPA may provide comments for consideration or changes required for incorporation into the AWSP prior to the EPA's approval. An EPA-approvable AWSP must be reached no later than 60 calendar days after this Order's effective date.
33. Once this AWSP is approved by the EPA in writing, Respondent shall implement the AWSP within 24 hours. The implementation of the AWSP shall remain in effect until the EPA provides written notification to Respondent that ASWP implementation is no longer required for that particular event.
34. Respondent shall develop an alternative water supply public notice document that provides the following information: 1) the location(s) where the alternative water supply outlined in the AWSP is available for pick up for all persons served by the System, 2) the days and hours when persons served by the System can pick up the alternative water, and 3) contact information as designated in the AWSP.
35. Within 30 calendar days of this Order's effective date, Respondent shall submit this alternative water supply public notice to the EPA for review and approval. The EPA may require changes to this document prior to providing its approval. An EPA-approvable alternative water supply public notice document must be reached no later than 60 days after this Order's effective date.
36. Once this public notice is approved by the EPA in writing, Respondent shall issue this public notice in accordance with its AWSP within 24 hours of the EPA's approval.

Use of Qualified Operator

37. Respondent shall immediately ensure a qualified operator is operating the System by submitting its current operators' D1 certification applications to the SWRCB within one week of this Order's effective date. Respondent shall provide the EPA with a courtesy copy of these applications on the same day Respondent submits the applications to the SWRCB.

Notifications

38. Respondent must notify the EPA within 24 hours after learning of a violation or situation with the potential to have serious adverse effects on human health as a result of short-term exposure to contaminants. 40 C.F.R. § 141.202(b)(2).

Reporting

39. Within five business days of this Order's effective date, Respondent must submit weekly updates to the EPA on Respondent's progress complying with this Order. These reports must be submitted to:

Christina Carroll
SDWA Enforcement Section
U.S. Environmental Protection Agency
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105
Phone: (415) 972-3736
E-mail: carroll.christina@epa.gov

GENERAL PROVISIONS

40. This Order does not affect any legal requirement or the EPA's legal enforcement options in this matter and does not supersede or replace the 2017 AOC. This Order constitutes final agency action. Under section 1448(a) of the SDWA, 42 U.S.C. 300j-7(a), Respondent may seek federal judicial review of SDWA section 1431 emergency orders.
41. EPA may modify this Order. The EPA will communicate any modification(s) to Respondent in writing and they shall be incorporated into this Order.
42. This Order does not relieve Respondent from its obligation to comply with applicable federal, state, or local law.
43. Pursuant to SDWA Section 1431(b), 42 U.S.C. § 300i, in the event Respondent violates, fails or refuses to comply with any of the terms or provisions of this Order, the EPA may commence a civil action in U.S. District Court to require compliance with this Order and to assess a civil penalty of up to \$23,963 per day of violation under SDWA, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
44. The EPA reserves all rights against the Respondent and all other persons to take any further civil, criminal, or administrative enforcement action pursuant to any available legal authority. Nothing in this Order shall preclude the EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional actions as the EPA may deem necessary, and/or from requiring Respondent in the future to perform additional activities pursuant to SDWA or any other applicable law.
45. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from the EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order, including any additional tasks determined by EPA to be required under this Order or any continuing obligation or promises, have been satisfactorily completed.

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Issued and effective this 21st day of June 2019.


for Amy C. Miller, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

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